

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEEROY JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 99-2094; Submitted on the Record;
Issued September 11, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his right knee causally related to factors of his federal employment.

On January 28, 1999 appellant, then a 60-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered pain in his right knee as a result of factors of his federal employment, specifically, from using his right leg and foot to drive a tug.

In a letter dated February 16, 1999, the Office of Workers' Compensation Programs requested further information from appellant. Appellant submitted a February 25, 1999 medical report by Dr. Raymond O. Pierce, Jr., a Board-certified orthopedic surgeon, who stated that he saw appellant on January 9, February 5 and April 3, 1998, at which times appellant was complaining of knee pain which appellant attributed to his employment, and that appellant continued to see him regarding difficulty with his right knee. He stated:

"It is felt that he has a history of an injury and that he had some quadriceps insufficiency which would account for recurrent swelling and effusion. This condition is usually aggravated by any prolong[ed] use of his right knee."

In a decision dated April 9, 1999, the Office denied appellant's claim, finding that the additional evidence received failed to detail how appellant hurt himself by driving the tug.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained injuries to his right knee and foot causally related to factors of his employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that an injury was

¹ 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³ The medical evidence required to establish a causal relationship, generally is rationalized medical opinion evidence.⁴

In the case at hand, Dr. Pierce's report does not mention how specific factors of appellant's employment caused his injury to his right knee. The physician did not address how driving the tug caused the injury or aggravated his diagnosed quadriceps insufficiency.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁵ To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated the diagnosed condition.⁶ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.⁷

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Alberta S. Williamson*, 47 ECAB 569, 572 (1996).

⁴ *Thomas L. Hogan*, 47 ECAB 323, 328 (1996).

⁵ *William S. Wright*, 45 ECAB 498 (1993).

⁶ *Id.*

⁷ Appellant submitted additional evidence to the Office after the issuance of its April 9, 1999 decision. He also submitted new evidence to the Board on appeal. The Board has no jurisdiction to review evidence submitted by appellant subsequent to the Office's April 9, 1999 decision or for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated April 9, 1999 is affirmed.

Dated, Washington, D.C.
September 11, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member